

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In re Applications of	)	MM DOCKET NO. 93-75
	)	
<b>TRINITY BROADCASTING OF FLORIDA, INC.</b>	)	File No. BRCT-911001LY
	)	
For Renewal of License of	)	
Station WHFT(TV) on Channel 45,	)	
Miami, Florida	)	
	)	
and	)	
	)	
<b>GLENDALE BROADCASTING COMPANY</b>	)	File No. BPCT-911227KE
	)	
For a Construction Permit for a	)	
New Commercial TV Station to	)	
operate on Channel 45, Miami,	)	
Florida	)	

To: Honorable Joseph Chachkin  
Administrative Law Judge

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**REPLY TO PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

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SUMMARY

With respect to the issues against TBF as to misconduct involving Trinity Broadcasting Network and NMTV, TBF primarily rests its case on the assertion that the Commission in adopting the minority exception to the twelve station multiple ownership limit intended to authorize extensive involvement by noncontrolling nonminority principals in minority companies. In fact, the Commission never adopted the policy imagined by TBF. Moreover, any such policy would not serve to justify the involvement of Trinity Broadcasting Network in the affairs of NMTV since only Paul Crouch, as an individual, was approved by the Commission as a noncontrolling director of NMTV. TBF otherwise seeks to justify the conduct of Trinity Broadcasting Network/NMTV based on arguments that amount to impermissible requests for reconsideration of the Hearing Designation Order.

TBF has failed to refute the record evidence clearly demonstrating that NMTV was created by Trinity Broadcasting Network for the purpose of claiming an unwarranted minority preference; that Trinity Broadcasting Network has controlled NMTV; and that Trinity Broadcasting Network/NMTV have consistently sought to conceal or to misrepresent the true nature of their relationship from the beginning up to the present. TBF's contrary claim is premised on attempts to

accord significance to minor matters. TBF's characterization of these matters cannot withstand careful analysis or the overwhelming weight of the contrary evidence.

TBF argues that even if Trinity Broadcasting Network/NMTV violated Commission requirements, the misconduct should not be viewed seriously since they were relying on counsel. This argument is premised on the same erroneous interpretation of Commission policy as allowing a greater degree of involvement by Trinity Broadcasting Network in NMTV's affairs than would ordinarily be permitted. Moreover, the record does not reflect that Paul Crouch in fact relied on counsel or that there would have existed a reasonable basis for such reliance. Finally, TBF urges that the imposition of any sanction would infringe upon its religious liberties. What TBF actually seeks is a religious exemption to otherwise applicable requirements, which would itself violate the Establishment Clause.

The Mass Media Bureau in its findings of fact and preliminary conclusions determines that Trinity Broadcasting Network/NMTV committed serious misconduct. In its ultimate conclusions, the Bureau proposes only monetary forfeitures on those parties while proposing renewal of TBF's license. The Bureau's ultimate conclusions are wholly inconsistent with its



findings of fact and preliminary conclusions. Most seriously, the Bureau would ultimately find no intent to conceal on the part of Trinity Broadcasting Network/NMTV although its preliminary conclusions indicate an intent to conceal was present. A monetary forfeiture would be a mere slap on the wrist, especially since the burden of paying the forfeiture would be borne by viewers who contribute money. Such a minimal sanction would fail to ensure the wrongdoers' future compliance with Commission requirements. It would also send the message that the Commission is not willing to impose serious sanctions upon those who abuse policies designed to promote minority ownership in broadcasting and other services.

The Lancaster/Lebanon extension application misrepresentation issue specified against Glendale must be resolved in Glendale's favor. The findings of TBF and the Bureau may not be relied upon because they distort the record and ignore evidence contrary to their positions. Raystay's agreements with Fenstermacher were an attempt by Raystay to develop the permits. TBF's claim that George Gardner abandoned any idea of building the permits in 1991 is contrary to the overwhelming mass of evidence. TBF mischaracterizes Raystay's agreement with Greyhound. Raystay did not seek extensions so it could sell the permits. TBF repeatedly attempts to make the applications say things they do not say

and makes specious arguments which have already been rejected by the Presiding Judge.

There was no lack of candor in the extension applications. TBF fails to recognize that intent to deceive is an essential element of lack of candor. Raystay disclosed the elements of its business plan in the applications, and it was not required to provide further information about why construction was not completed because the Bureau decided such information was unnecessary. Raystay's budget was irrelevant to the Commission, as was the Greyhound agreement and the discussions concerning TV40. TBF misstates the law concerning an applicant's intent in seeking extensions.

There was no misrepresentation in the extension applications. Everyone associated with Raystay who reviewed the application believed the statement concerning negotiations with site owners was true. TBF's argument that David Gardner did not have the discussions he described in his testimony is absurd. The statement concerning David Gardner's visits to the transmitter sites was correct; TBF's attack on that statement is semantic quibbling and rank speculation. The statement concerning negotiations with cable operators was accurate regardless of whether Harold Etsell was talking to cable operators in late 1991 and 1992, and the people who reviewed the applications believed Mr. Etsell was talking to cable operators in that period.

Since there was no misrepresentation or lack of candor, there is no basis for disqualifying Glendale. In any event, Glendale could not be disqualified unless George Gardner acted with an intent to deceive the Commission, and there is no record evidence supporting this conclusion. TBF's argument that George Gardner did not take adequate steps to verify the extension applications is sheer hypocrisy in light of Paul Crouch's experience in the International Panorama case and his subsequent failure to read applications he signed. The fact that George Gardner signed the applications and his status as Raystay's President do not, by themselves, support Glendale's disqualification.

TBF is not entitled to a renewal expectancy. TBF and the Bureau ignore the many defects in TBF's ascertainment and programming. TBF is not entitled to credit for its children's programming because there is no relationship between that programming and the needs of children in the service area. Its record of community involvement is not nearly as strong as the Bureau argues. The mere appearance of minorities on the station and the alleged subjective impact of the programming on people do not support the grant of a renewal expectancy. Finally, TBF would not be the comparative winner if it received the minimal renewal expectancy advocated by the Bureau.

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To: Honorable Joseph Chachkin  
Administrative Law Judge

**REPLY TO PROPOSED FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

Glendale Broadcasting Company (Glendale), by its attorneys, now replies to the proposed findings of fact and conclusions of law filed collectively by Trinity Broadcasting of Florida, Inc. (TBF), Trinity Broadcasting Network (TBN or Trinity) and National Minority T.V., Inc. (NMTV) on August 15, 1994, as well as the proposed findings of fact and conclusions of law filed by the Mass Media Bureau (Bureau) on the same date. The failure to respond to a particular finding of fact or conclusion of law is not a concession that the finding or conclusion is accurate, relevant, or meritorious.

**I. TBF DE FACTO CONTROL/ABUSE OF PROCESS ISSUES**

1. TBF's defense rests principally upon a distorted interpretation of the Commission's minority ownership policies as allowing extensive involvement by Trinity Broadcasting Network in the affairs of NMTV. TBF's interpretation is wholly devoid of justification; however, upon it TBF premises not only the contention that its conduct was permitted but alternative arguments that it cannot be held accountable even if its conduct was impermissible. In fact, the record amply demonstrates that NMTV was created by Trinity Broadcasting Network for the purpose of obtaining unwarranted benefits reserved for minorities; that Trinity Broadcasting Network in fact controlled NMTV; and that it has attempted to mislead the Commission from the beginning up to the present through concealment and candorlessness.

**A. The Position of TBF**

**1. TBF's Defense Is Premised On A Distortion Of The Commission's Minority Ownership Policies**

2. TBF commences its proposed conclusions with an extended discussion of the Commission's minority ownership policies. TBF Findings, para. 590-600. The purpose of this discussion is to establish the proposition that the Commission's policies, including most particularly the minority exception to the 12-station multiple ownership limitation, are intended to permit "joint ventures" between

minorities and established broadcasters pursuant to which the experienced broadcaster would be primarily responsible for station operations pending acquisition by minorities of sufficient expertise to operate the station themselves. As a result, according to TBF:

. . . Commission policy not only permits Dr. Crouch and TBN as experienced broadcasters to have substantial influence in NMTV, it affirmatively encourages it.

TBF Findings, para. 603 (emphasis added).

3. TBF, of course, urges that the impact of this alleged "policy" is to justify the extensive involvement of Trinity Broadcasting Network in the affairs of NMTV documented in this proceeding. In later portions of its findings, however, TBF alternatively relies upon this "policy" as mitigating any misconduct that might arguably be found. Thus, it faults the Commission for not defining with precision the degree of "substantial influence" the "policy" contemplated. TBF Findings, para. 653. This in turn is cited as justification for Trinity Broadcasting Network's reliance on counsel to assist in interpreting an imprecise Commission policy. TBF Findings, para. 656. Thus, the interpretation of Commission "policy" articulated at para. 590-600 of TBF's Findings provides the conceptual framework for TBF's entire defense. If this interpretation is erroneous -- which it in fact is -- then the entirety of TBF's defense is fatally undermined.

4. It should be initially noted that the Commission found in the Hearing Designation Order, FCC 93-148, released April 7, 1993 in this proceeding (HDO) that the same considerations apply in considering whether NMTV is subject to the de facto control of Trinity Broadcasting Network as would apply in any other case. The Commission clearly rejected the proposition that minority-controlled entities are subject to some different test. HDO, para. 13. The Commission therein stated:

We reject the contention that the minority-control portion of our multiple ownership rules precludes us from looking beyond mere legal ownership of a licensee. . . . when a substantial and material question of fact is appropriately raised concerning the de facto control of the licensee by another entity, we are not precluded from examining this issue using our established indicia of control.

As reflected at HDO, para. 6, NMTV had sought a ruling as to:

. . . whether a minority-controlled corporation is prohibited from receiving assistance from or associating with a nonminority-controlled corporation in various enumerated ways.

At HDO, para. 13, the Commission refused to accord blanket approval for such interrelationships but indicated that the facts of the situation had to be viewed as a whole in light of traditional control criteria. The position now advanced by TBF in effect seeks reconsideration of the HDO. Thus, TBF urges that it is not subject to the ordinary de facto control

criteria, the very contention considered and rejected in the HDO. Such a contention is clearly precluded by well-settled precedent that an applicant cannot seek reconsideration of a designation order from subordinate staff officials such as presiding hearing officials or the Review Board. Atlantic Broadcasting Co., 5 FCC 2d 717, 720-21 (1966); Fort Collins Telecasters, 103 FCC 2d 978, 983-84 (Rev. Bd. 1986); Western Cities Broadcasting, Inc., 6 FCC Rcd 2325 (Rev. Bd. 1991); Algreq Cellular Engineering, FCC 94R-12, released July 22, 1994, at para. 36-37.

5. TBF's position is in any event without merit. It is premised principally on an advisory report prepared for the Commission.<sup>1</sup> TBF cites language in the Report to the effect that minorities have been disadvantaged not only by the lack of financing but also by a lack of management and technical expertise, encompassing such areas as engineering, law, accounting, finance, and public relations. TBF Findings, para. 592. Accordingly, TBF asserts, the Report urged the Commission to adopt policies that would permit "joint venturing" between minority broadcasters and "private sector resources" that could provide the requisite experience. TBF finally cites the following "Recommendation" included in the

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<sup>1</sup> Strategies for Advancing Minority Ownership Opportunities in Telecommunications, The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission (May 1982) (the Report).



Report, which for purposes of analysis is restated in three parts:

Part 1

For example, FCC policies should allow an established entrepreneur to acquire an equity interest in a minority-controlled property that otherwise would exceed multiple ownership limits or adversely affect diversification.

Part 2

The policy could encourage participation in varying degrees, from a simple equity position by a venture capitalist with no management activity, to a situation where minorities hold a controlling interest while the established operator develops the property. The latter venture enables the investor to protect his return on equity and provides an inexperienced minority entrepreneur with management and technical support. (emphasis supplied in TBF's Findings).

Part 3

Another possibility would be to allow the established multiple operator to acquire the additional prohibited property provided he assisted a minority in the financing of another comparable venture.

TBF Findings, para. 593.

6. The observations of the Report may be interesting; however, they are of no relevance to this case except to the extent that they were in fact adopted by the Commission. TBF asserts that in fact the Report's recommendation "became the Commission's policy". Its basis for this assertion is the Commission's Reconsideration of Multiple Ownership Rules, 100 FCC 2d 74, 57 RR 2d 966 (1985) (Reconsideration), in which the

Commission adopted the present exception to the 12 station limit. TBF's characterization is disingenuous. Reconsideration does not address the adoption of the exception in terms of accepting the Report's recommendation. 57 RR 2d at 981-82. The only reference to the Report is an incidental citation in a footnote. 57 RR 2d at 981 n. 57. Obviously, the Commission did not adopt the proposal set forth in Part 3 of the Report's recommendation. While the Commission adopted generally the recommendation of Part 1 insofar as it related to the multiple ownership rules, Reconsideration did not premise the Commission's action on the Report's recommendation. Part 2 is not in fact a recommendation but merely identifies a range of options available to the Commission. There is nothing in the discussion in Reconsideration indicating that in adopting the exception to the Rule of 12 the Commission intended to endorse the extreme option emphasized by TBF in its reproduction of Part 2 of the Report's recommendation. Indeed, such an interpretation is patently inconsistent with the fact that the Commission did adopt a Note to Section 73.3555 which states:

"Note 1: The word control as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised."

That the Commission intended to permit the nonminority noncontrolling stockholder of an ostensibly minority-

controlled entity to in fact enjoy "actual working control" is purely a figment of TBF's imagination.

7. There is nothing in Reconsideration that otherwise indicates that the Commission intended to adopt the concept of "joint ventures" adverted to in the Report. The concept of a "joint" venture implies that the parties to such a venture would enjoy a posture of equality; however, the Rule actually adopted requires that nonminority principals be divorced from both de jure and de facto control. Nor is there anything indicating an expectation on the Commission's part that the noncontrolling principal would assume primary responsibility for the operation of the station to compensate for the lack of experience on the part of the controlling minorities. Indeed, Reconsideration indicates that the Commission did not intend to use the multiple ownership rules as the principal vehicle for promoting minority ownership. The exception to the 12 station limitation was rather a supplementary measure of limited scope.

8. As noted, TBF at para. 653 of its Findings criticizes the Commission for adopting a policy encouraging group owners to become involved in the affairs of minority enterprises while failing to provide clear guidance as to the permissible extent of such involvement. In fact, this "failure" is compelling evidence that the Commission never adopted any such policy. It cannot be assumed that the Commission would adopt

such a novel -- if not radical -- policy as that imagined by TBF without providing guidance as to its intended scope.

9. TBF notes that the Commission generally treats officers and directors as holding a cognizable interest because of the fear that they could potentially have undue influence even without an equity interest. TBF Findings, para. 598. From this, TBF reasons that the Commission intended noncontrolling owners to have a similarly excessive degree of influence over minority-controlled applicants. There is, however, nothing in Reconsideration suggesting that this was the Commission's intent. As stated, Note 1 to the Rule expressly indicates to the contrary. The most that could be concluded is that given the relatively small number of stations that would be licensed under the minority exception to the Rule of 12 (unlike the general attribution rules which apply to all broadcast stations) and the desirability of promoting minority ownership, the Commission was willing to assume the risk that the potential existed that some unscrupulous operators might take improper advantage of the Rule. This obviously did not mean that the Commission intended to overlook the misconduct of such operators if and when it surfaced. Indeed, the underlying integrity of the Commission's goal of promoting minority ownership requires that such misconduct be subjected to the severest of sanctions.

10. Unfortunately, measures designed to facilitate the entry of minorities into broadcasting have also had the effect of bringing out legions of unscrupulous nonminority parasites seeking to subvert the Commission's noble goals for their own advantage. The plethora of abuse that has arisen in the context of the Commission's comparative adjudications is common knowledge. More recently, the specter of abuse of policies designed to promote minority ownership has arisen in the new Interactive Video and Data Service (IVDS), requiring the initiation of a Section 403 inquiry into the conduct of some of the initial bidders. Order in GN Docket No. 94-96, FCC 94-222, released August 30, 1994. This occurred notwithstanding that:

In adopting rules to govern the IVDS auctions, the Commission announced that it would be vigilant to ensure the integrity of the auction process and to prevent abuses of the auction rules, particularly those measures adopted to provide opportunities for small businesses owned by minorities and women. The Commission warned that 'if an applicant for designated entity status proves unqualified, and the Commission determines that the application for designated entity status involved willful misrepresentation or other serious misconduct, the Commission will impose severe penalties. . . .'

Order in GN Docket No. 94-96, supra, at para. 2 (emphasis supplied)(footnote omitted). Clearly by this point in time, the Commission has the scars to prove that the only effective way of deterring such malfeasors is to completely and

relentlessly strip them from the rolls of Commission licensees and applicants.

11. In sum, there is no basis for TBF's claim that a different standard should be applied to consideration of the role of a noncontrolling principal in a minority-controlled licensee. The Commission has never adopted any policy reflecting an intent or expectation that a nonminority principal would assume a dominant posture in such a licensee.<sup>2</sup>

12. Even if there were some merit to TBF's convoluted analysis, there is still a fundamental flaw in TBF's application of its own analysis to the facts of this case. Thus, as noted, TBF construes Commission policy as permitting extensive involvement in the affairs of NMTV not only by Paul Crouch but also by Trinity Broadcasting Network. TBF Findings, para. 603. In point of fact, however, the only nonminority recognized as a principal of NMTV by the Commission is Paul Crouch as an individual. The Commission has never approved Trinity Broadcasting Network as a director of NMTV and there is accordingly no basis for assuming that

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<sup>2</sup> This case may serve as a case study suggesting that such a policy would not be an effective device for promoting minority ownership. In addition to the unauthorized assumption of control that has resulted, little has been accomplished in terms of giving minorities expertise in broadcasting. The record does not reflect that Trinity Broadcasting Network made any significant effort to educate NMTV's outside directors, or that the outside directors in fact acquired any significant knowledge of broadcasting as a result of their involvement in NMTV.

the Commission ever anticipated any role for Trinity Broadcasting Network in the operations of NMTV. Simply put, Trinity Broadcasting Network is not a principal of NMTV and has no basis for acting like one, whatever role the Commission may have recognized as appropriate for a nonminority principal of a minority-controlled licensee. There is absolutely no basis for TBF's assumption -- which it makes no attempt to justify -- that the Commission's acceptance of one individual -- Paul Crouch -- as a noncontrolling principal of NMTV permitted wholesale intervention in that entity's affairs by the entire Trinity Broadcasting Network organization.

13. Ultimately, the only significance that can be attributed to TBF's reliance on a specious argument such as that developed at TBF Findings, para. 590-600, is that it reflects TBF's awareness of the speciousness of its own case. The attempt to conjure up an imagined Commission policy that does not exist is a virtual admission on TBF's part that it has no defense under those Commission policies and precedents that in fact do exist. This is particularly so given that this imaginary "policy" is the linchpin supporting not only TBF's claim that it has not violated Commission policy but also its contention that it reasonably relied on advice of counsel in an area where the Commission's policy was unclear.

2. Trinity Broadcasting Network/NMTV Have Acted in a Consistently Candorless Manner

14. Glendale demonstrated in its findings, Section II(A)(20), that Trinity Broadcasting Network and NMTV have pursued a consistent policy of concealment and lack of candor beginning with the filing of applications claiming benefits based on the purported status of NMTV as a minority-controlled entity, continuing through the filing of pleadings seeking to rebut questions raised as to these claims, and continuing even into the instant proceeding. The conduct of Trinity Broadcasting Network/NMTV in this regard is a major factor distinguishing this case from many relied upon by TBF to support its conclusions. For instance, reliance is placed on Seven Hills Television Company, Inc., 2 FCC Rcd 6867, 64 RR 2d 274 (Rev. Bd. 1987) (Seven Hills) on many instances in TBF's findings. One critical distinction between that case and the instant case is that the Board in Seven Hills found that the ALJ in that case had failed to make any adverse findings concerning the credibility of the licensee or its principals. Seven Hills, para. 63, 64 RR 2d at 299. Here, however, adverse credibility findings are warranted based both on the performance of the parties throughout the period under review as well as the testimonial performance of the witnesses in this proceeding. The following are examples of the most egregious and easily demonstrable instances of lack of candor, which illustrate both the candorless course of conduct adopted



by the respective parties and the lack of testimonial credibility of their principal witnesses.

a. NMTV's Alleged Minority Purpose

15. The most egregious example of Trinity Broadcasting Network's candorless performance in this case relates to the claim that NMTV had as a significant purpose the assisting of minorities in achieving broadcast ownership and employment. This claim derives no support from any objective evidence. There is no documentary support for the proposition that NMTV has a purpose of assisting minorities. Glendale Findings, para. 20. Minority population was not a significant factor in the selection of low power or full power station locations. Glendale Findings, para. 33, 67, 109, 272. No consideration has ever been given to expanding the NMTV board to include more minorities. Glendale Findings, para. 17. Jane Duff reluctantly conceded after evading the Presiding Judge's efforts to get an answer that NMTV never had a minority director from a community in which it operated a station. Glendale Findings, para. 87. E.V. Hill conceded that he never made any efforts to bring a minority unto the NMTV board. Glendale Findings, para. 199. The top three management positions for NMTV's principal station in Portland went to two existing nonminority employees of Trinity Broadcasting Network (and the spouse of one) without any efforts to search out qualified minorities. Glendale Findings, para. 311-12.